

EXCERPTS FROM THE DEPOSITION
OF JOSEPH FATH
TAKEN JULY 12, 2021

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4 -----)
5 IN RE TESLA, INC.
6 SECURITIES LITIGATION Civil Action No.
7 3:18:cv-04865-EMC
8 -----)

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12 REMOTE DEPOSITION OF JOSEPH FATH

13 New York, New York

14 July 12, 2021
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24 Reported by:
Linda Salzman
25 JOB NO. 196636

July 12, 2021

12:15 p.m.

Remote deposition of JOSEPH

FATH, the witness herein, held

remotely before Linda Salzman, a

Notary Public of the State of New

York.

A P P E A R A N C E S:

LEVI & KORSINSKY

Attorneys for Plaintiffs

1101 30th Street, Northwest

Washington, D.C. 20007

BY: NICHOLAS PORRITT, ESQ.

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COOLEY

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3175 Hanover Street

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BY: PATRICK GIBBS, ESQ.

BINGXIN WU, ESQ.

T. ROW PRICE

Attorneys for the Witness

100 East Pratt Street

Baltimore, Maryland 21202

BY: CHRIS SHAHEEN, ESQ.

Also Present:

LEM LATTIMER, Videographer

1 STIPULATIONS

2 IT IS HEREBY STIPULATED AND
3 AGREED by and among counsel for the
4 respective parties hereto, that the
5 sealing and certification of the
6 within deposition shall be and the
7 same are hereby waived;

8 IT IS FURTHER STIPULATED AND
9 AGREED all objections, except as to
10 the form of the question, shall be
11 reserved to the time of the trial;

12 IT IS FURTHER STIPULATED AND
13 AGREED that the within deposition may
14 be signed before any Notary Public
15 with the same force and effect as if
16 signed and sworn to before the Court.

1 THE VIDEOGRAPHER: Good morning,
2 Counselors. My name is Lem Lattimer.
3 I am a legal videographer in
4 association with TSG Reporting, Inc.

5 Due to the severity of COVID-19
6 and following the practice of social
7 distancing, I will not be in the same
8 room with the witness. Instead, I
9 will record this videotaped deposition
10 remotely. The reporter, Linda
11 Salzman, also will not be in the same
12 room and will swear the witness in
13 remotely.

14 Do all parties stipulate to this
15 video recording and remote swearing
16 and that it will be admissible in the
17 courtroom as if it had been taken
18 following Rule 30 of the Federal Rules
19 of Civil Procedures and the state's
20 rules where this case is pending?

21 Counselors, I need you to
22 stipulate.

23 MR. PORRITT: Oh, yes. So
24 stipulate.

25 MR. GIBBS: So stipulated.

1 THE VIDEOGRAPHER: Thank you.

2 This is the start of media labeled No.
3 1 of the video-recorded deposition of
4 Joseph Fath in the matter of In re:
5 Tesla, Inc. Securities Litigation on
6 July 12, 2021, at approximately 12:16
7 p.m.

8 All appearances are noted on the
9 record. Will the court reporter
10 please swear in the witness.

11 J O S E P H F A T H,

12 called as a witness, having been duly
13 sworn by a Notary Public, was examined
14 and testified as follows:

15 EXAMINATION BY

16 MR. PORRITT:

17 Q. Good afternoon, Mr. Fath. My
18 name is Nicholas Porritt. I'm with the
19 law firm of Levi & Korsinsky representing
20 the plaintiff Glen Littleton and the class
21 in this action.

22 Could you start off by just
23 stating your full name and position at T.
24 Rowe Price?

25 A. Joseph Fath, F-A-T-H. I run the

1 Q. Do you recall that the Musk
2 Tweet also mentioned the words "funding
3 secured"?

4 A. I do remember that.

5 Q. Okay. Do you recall what your
6 reaction was to seeing those words in his
7 Tweet?

8 A. Again, shock and surprise.
9 Again, at that price point, it would have
10 been a very healthy amount of capital you
11 would need to raise to take the company
12 private. So I was surprised.

13 And I know we'll talk about
14 following emails, but we all internally
15 tried to speculate who would have the
16 wherewithal to do that type of
17 transaction.

18 Q. And what was your interpretation
19 of the meaning of "funding secured"?

20 A. Just as it states. When I read
21 that, I assumed he had secured sources or
22 financial sources to fund a go-private
23 transaction.

24 Q. And what does it mean by
25 "secured" in your mind?

1 A. To have locked and loaded and no
2 question at all a hundred percent that you
3 have funding ready to go and you're
4 prepared to move forward with this
5 transaction.

6 Q. So we can talk to -- back to
7 Exhibit 41.

8 You start off mentioning that
9 you were on vacation in Nevis. Then you
10 say, "I just spoke to IR."

11 Do you see that?

12 A. I do.

13 Q. Who did you speak to in IR?

14 A. I believe I spoke to Martin
15 Viecha.

16 Q. Okay. Do you recall what Martin
17 Viecha told you?

18 A. He was as shocked as I was, and
19 I just, as you would as any portfolio
20 manager or analyst ask, I saw the Tweet.
21 Is there a press release coming with more
22 details?

23 And I got the sense they thought
24 the same thing I did, that that wouldn't
25 have been Tweeted unless there was

1 Q. Okay. Do you recall at this
2 time reaching out through that contact to
3 see to get information from Saudi Arabia
4 regarding potentially investment in Tesla?

5 A. Absolutely not. We don't have
6 communication with them. They direct all
7 communication to us. We don't have an
8 open line.

9 Q. Referring back to Exhibit 41,
10 you conclude, "If I learn anything else,
11 I'll be back to you all. But I can't
12 imagine he would Tweet this if not truth
13 to it because that would seem to me like
14 pretty black-and-white stock
15 manipulation."

16 Do you see that there?

17 A. I do.

18 Q. Does that reflect your sort of
19 understanding as of 1:17 p.m. on August
20 7th?

21 A. It does.

22 Q. Why would you think it would be
23 pretty black-and-white stock manipulation
24 for this Tweet go out without truth to it?

25 A. Well, as you see in the Tweet,

1 it's very specific. It talks about the
2 company being taken private, has a
3 specific dollar amount, along with the
4 verbiage funding secured.

5 That to me in my role seems
6 pretty black-and-white. There's nothing
7 left for interpretation in those
8 statements.

9 MR. PORRITT: Kathy, if you can
10 bring over Bates-stamp 6, 6 through 8.

11 MS. VALDIVIESO: Did you say 6,
12 Nick?

13 MR. PORRITT: Yes, 6.

14 MS. VALDIVIESO: By the way,
15 Exhibit 8 was uploaded, and if you
16 need the other exhibits previously
17 marked, just clarify the date and hour
18 of the Tweet to be able to upload the
19 previously marked exhibit, Nick.

20 MR. PORRITT: Okay. Thank you.

21 I'll refer the witness -- and
22 you may have to go through the
23 submitted folder to Exhibit 8. It's a
24 document previously marked as Exhibit
25 8.

1 the witness a document previously
2 marked as Exhibit 13.

3 Q. Do you see that, Mr. Fath?

4 A. I do.

5 Q. Do you recognize this document?

6 A. I recognize that Tweet, yes.

7 Q. Okay. Do you recall when you
8 first saw that Tweet?

9 A. Again, it was a frenzy that day,
10 but I see it's August 7th. I remember
11 seeing it. But, again, I was on vacation.
12 I saw it sometime during the day.

13 Q. Do you recall reading the
14 statement there on the top of -- beginning
15 of the Tweet in Exhibit 13, "Investor
16 support is confirmed"?

17 A. Absolutely.

18 Q. Do you recall what your reaction
19 was to seeing those words?

20 A. Yes. I was shocked because I
21 said to myself, well, I know it's not us
22 because we haven't spoken to them.

23 Q. What was your understanding of
24 the meaning of the words "investor support
25 is confirmed"?

1 A. Well, with the funding secured
2 Tweet followed by this, that he had it
3 lined up, whatever investors that may be,
4 to support the transaction and be able to
5 take them private.

6 That was my, you know -- and
7 again, I think it just reinforced the
8 funding secured.

9 MR. PORRITT: So, Kathy, if you
10 can bring up Bates-stamp 12.

11 MS. VALDIVIESO: Yes, Nick.
12 It's uploading and it's there.

13 MR. PORRITT: Is this Exhibit
14 44? I think so. Yes.

15 (Fath Exhibit 44, Email, Bates
16 No. TRP_000012, marked for
17 identification, as of this date.)

18 MR. PORRITT: I've placed before
19 the witness a document marked as
20 Exhibit 44. It's an email dated
21 August 8, 2018, Bates-stamped
22 TRP_000012.

23 Q. Do you have that document in
24 front of you, Mr. Fath?

25 A. I do.

1 Q. Is Josh Spencer also in the
2 Baltimore office?

3 A. He is.

4 Q. What about Joel Grant?

5 A. He was. He is now located in
6 London. But at the time, he was here in
7 Baltimore.

8 Q. Do you recall -- what do you
9 recall next following your return from
10 vacation about the Tesla go-private
11 transaction?

12 A. Well, I think as the days passed
13 and given they were reaching out, I think
14 I became much more suspicious that the
15 funding was secured and that, you know,
16 they were clearly probably trying to set
17 up funding to consummate the transaction.

18 But I don't recall the
19 conversations that ensued in the days that
20 followed.

21 Q. So what's the basis for the sort
22 of understanding that you just described?

23 A. Well, I think that email that
24 you referenced before this, him just
25 reaching out and wanting to speak with me,

1 started to raise yellow flags in my mind
2 that a deal was done.

3 If a deal had been done and
4 funding had been secured, why reach out to
5 us.

6 MR. PORRITT: Why don't we --
7 Kathy, why don't you bring up the
8 previous Exhibit 19. It's the New
9 York Times article.

10 MS. VALDIVIESO: It's uploading.
11 It's taking some time. And it's
12 there.

13 MR. PORRITT: The witness has in
14 front of him a document previously
15 marked as Exhibit 19, a New York Times
16 article dated August 16, 2018.

17 Q. Do you recall reading this
18 newspaper article, Mr. Fath?

19 A. I don't. I don't. There were
20 so many -- I may have. There were so many
21 publications that had articles out. I
22 read some and some I didn't.

23 Q. When do you recall first
24 reaching the conclusion that the
25 go-private transaction was probably not

C E R T I F I C A T E

STATE OF NEW YORK)

: ss

COUNTY OF NEW YORK)

I, Linda Salzman, a Notary
Public within and for the State of
New York, do hereby certify:

That JOSEPH FATH, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that
such deposition is a true record of
the testimony given by the witness.

I further certify that I am not
related to any of the parties to
this action by blood or marriage,
and that I am in no way interested
in the outcome of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 18th day
of July, 2021.



Linda Salzman